

# EXHIBIT C

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**Subject:** [EXTERNAL] RE: US v. LN - Privilege Log (RFP No. 2)  
**Date:** Friday, November 8, 2024 2:29:42 PM

Brian,

Defendants have already provided sufficient detail on their RFP 2 privilege log to allow Plaintiffs to understand their privilege claims. Under the Court's individual practices, "Privilege logs should be sufficiently detailed to enable the receiving party to evaluate a claim of privilege, including identification of attorneys involved in the relevant documents or communications." Defendants have done this: the lawyers involved are clearly outside counsel and the subject matter of each withheld document involves a common legal strategy in responding to Plaintiff's investigation that has become this very litigation. While Defendants remain puzzled as to why additional information is required on this point, in the spirit of narrowing any open discovery issues, below please find additional detail as requested.

As Defendants have explained previously, they have separate, bilateral, oral joint defense agreements and a common legal interest with each of Oak View Group, Irving Azoff and the Azoff Company, and Silver Lake. The law does not require a written agreement for the common interest doctrine to apply. *See Subramanian v. Lupin Inc.*, 2019 WL 1771556, at \*3 (S.D.N.Y. Apr. 23, 2019) ("For the common interest doctrine and/or joint defense privilege to apply, there must be an oral or written agreement that embodies 'a cooperative and common enterprise towards an identical legal strategy.'"); *Lugosch v. Congel*, 219 F.R.D. 220, 237 (N.D.N.Y. 2003) (explaining that the agreement does not "necessarily" have to be "in writing").

These joint defense agreements became effective when Plaintiffs began investigating each of these entities in conjunction with Live Nation. To the best of Defendants' records, below are the approximate dates for each agreement and the primary attorney contact for each outside counsel

law firm:

- Oak View Group – April 2023 (with Adam Di Vincenzo of Milbank)
- Silver Lake – April 2023 (with Kate Rocco of Latham & Watkins)
- Irving Azoff and the Azoff Company – October 2023 (with David Marroso of O’Melveny)

These joint defense agreements continue in effect today as Plaintiffs’ investigation has now become the federal court litigation pursuant to which Defendants are providing this privilege log. As we have explained, the common legal interest has been, and remains today, defending against initially Plaintiffs’ investigation and now Plaintiffs’ subsequent lawsuit. All of these entities (OVG, Irving Azoff, The Azoff Company, and Silver Lake) are named and/or referenced in Plaintiffs’ Amended Complaint. Plaintiffs issued CIDs to these entities, investigated the dealings between them, and also alleged that OVG engaged in anticompetitive conduct on Defendants’ behalf. Moreover, contrary to Plaintiffs’ assertion, Defendants have a common legal interest with each of Mr. Azoff (and his company) and Silver Lake that is separate from their status as investors in OVG. Azoff, the Azoff Company and Silver Lake all received separate CIDs from Plaintiffs and are individually referenced in Plaintiffs’ Amended Complaint.

Regards,  
Lindsey

**Lindsey S. Champlin**

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**Subject:** RE: US v. LN - Privilege Log (RFP No. 2)

Robin, thank you for taking the time to participate in the Lead Trial Counsel meet and confer on Monday concerning Plaintiffs' RFP No. 2 and Defendants' privilege log listing responsive documents that Defendants are withholding. We understand the following with respect to the logged documents:

- Defendants assert that each document is protected by the attorney work product doctrine. Defendants are not relying on the attorney-client privilege.
- Defendants contend that the work product protection was not waived when the documents were shared with third parties because each of those third parties has a common legal interest with Defendants.
- There are no written common interest agreements. Each agreement is a bilateral agreement that was formed orally by counsel for Live Nation and counsel for the third party.
- Defendants contend that oral agreements were reached with the following non-parties by Live Nation's counsel at Latham & Watkins (Andrew Gass and Lindsey Champlin):
  - Oak View Group (represented by Milbank)

- Irving Azoff and his company (represented by O'Melveny & Myers)
  - Silver Lake (represented by Latham & Watkins)
- You have no record of, and cannot confirm:
  - the date on which any of the purported common interest agreements were reached,
  - whether they were prospective or retroactive,
  - the duration of any of the agreements, or
  - any of the terms of the agreements.
- You do not know the identity of the lawyer(s) at O'Melveny & Myers who purportedly entered into the oral common interest agreement on behalf of Mr. Azoff and his company.
- You are aware that O'Melveny & Myers has represented to Plaintiffs that there is no applicable common interest agreement between Mr. Azoff and/or his company and Live Nation.
  - You suggested that there might be a misunderstanding between Plaintiffs and counsel for Mr. Azoff/Azoff's company
  - You were unable or unwilling to articulate the nature of that misunderstanding
- The asserted common interest with each entity is "a common legal interest in defending against anticipated litigation implicating Live Nation and these entities." You are unwilling or unable (a) to define the common legal interest with any greater specificity, (b) specify the common legal strategy pursued by Live Nation and these entities, or (c) provide information that would confirm that the documents on Defendants' log fall within the scope of the common interest identified in the oral agreements.
- You indicated:
  - OVG's interest was as a potential co-defendant with Live Nation in litigation
  - the interests of Mr. Azoff/Azoff's company and Silver Lake arise from their status as investors in OVG.
- You agreed to remove the confidentiality designation from Defendants' privilege log.

The Parties are at an impasse and Plaintiffs intend to file a motion to compel.

Regards,

Brian

Brian A. White

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**From:** White, Brian (ATR)

**Sent:** Sunday, November 3, 2024 10:46 PM

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**Subject:** RE: US v. LN - Privilege Log (RFP No. 2)

Robin:

Thank you for your e-mail, which provides a subset of the information Plaintiffs requested. We request that Defendants be prepared to discuss the following on our call tomorrow (Monday, November 4):

1. The number of "oral agreements" that apply to the logged documents
2. The identity of each party to each oral agreement, including whether those agreements are bilateral or multilateral

3. The dates when those agreements were reached
4. The names of each of the individuals who held each discussion concerning the purported agreements
5. The terms of each agreement, including but not limited to whether and how they define
  1. The common legal interest
  2. The common legal strategy being pursued
6. The specific agreement(s) that purportedly apply/applies to communications between Live Nation's counsel and Mr. Azoff's personal attorneys, including the identity of each party to such agreement(s)

In addition, we note that Defendants designated the privilege log "Confidential" pursuant to the Protective Order. It does not appear that the information in the log meets the definition of "Confidential" pursuant to Paragraph 3 of the Protective Order. Plaintiffs request that Defendants withdraw the confidentiality designation so that we can avoid the need to pursue unnecessary sealing if there is motion practice over the log.

Brian

Brian A. White

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**From:** [Robin.Gushman@lw.com](mailto:Robin.Gushman@lw.com) <[Robin.Gushman@lw.com](mailto:Robin.Gushman@lw.com)>

**Sent:** Thursday, October 31, 2024 6:54 PM

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**Subject:** [EXTERNAL] RE: US v. LN - Privilege Log (RFP No. 2)

Brian,

Defendants disagree that there are “deficiencies” in their privilege log relating to Plaintiffs’ RFP No. 2.

The privileged documents listed on the log include communications between (1) outside counsel for Live Nation and (2) outside counsel for OVG, and outside counsel for OVG’s two owners (Irving Azoff—whose counsel represents him individually and his companies—and Silver Lake). These are outside counsel-to-outside counsel, lawyer-to-lawyer communications. There are no non-lawyers involved.

All of these entities (Irving Azoff, The Azoff Company, OVG, and Silver Lake) are named and/or referenced in Plaintiffs’ Amended Complaint. The Department of Justice issued CIDs to these entities, investigated the dealings between them, and also alleged that OVG engaged in anticompetitive conduct on Defendants’ behalf. With respect to communications between counsel for Live Nation and counsel for these entities, there is a common legal interest in defending against anticipated litigation implicating Live Nation and these entities. The counsel-to-counsel communications listed on Defendants’ privilege log relate to the Department of Justice’s investigation into the live entertainment industry and strategies for responding to that investigation, which is obviously now in litigation.



There need not be a written agreement for the common interest doctrine to apply. See *Subramanian v. Lupin Inc.*, 2019 WL 1771556, at \*3 (S.D.N.Y. Apr. 23, 2019) (“For the common interest doctrine and/or joint defense privilege to apply, there must be an oral or written agreement that embodies ‘a cooperative and common enterprise towards an identical legal strategy.’”); *Lugosch v. Congel*, 219 F.R.D. 220, 237 (N.D.N.Y. 2003) (explaining that the agreement does not “necessarily” have to be “in writing”). The communications listed on Defendants’ privilege log were made pursuant to oral agreements.

With respect to Defendants’ representation in a May 7, 2024 letter that Live Nation had not “identified any responsive documents that it intend[ed] to withhold on the basis of . . . any . . . joint defense and/or common interest agreement,” the communications listed in Defendants’ privilege log post-date the relevant date range for the CID.

We are not available for a lead trial counsel conference on Friday, but we are available on Monday at 1 pm PT / 4 pm ET.

Best,  
Robin

**Robin L. Gushman**

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**Subject:** RE: US v. LN - Privilege Log (RFP No. 2)

Robin, while you are gathering the information responsive to these questions, will you let us know some times when Defendants are available for a Lead Trial Counsel meet and confer about this on both Friday, November 2 and Monday, November 4, 2024?

Thank you,

Brian A. White

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**From:** [Robin.Gushman@lw.com](mailto:Robin.Gushman@lw.com) <[Robin.Gushman@lw.com](mailto:Robin.Gushman@lw.com)>

**Sent:** Wednesday, October 30, 2024 4:14 PM

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**Subject:** [EXTERNAL] RE: US v. LN - Privilege Log (RFP No. 2)

Brian,

Thank you for your email. We will respond as soon as we can, but it may not be today.

Best,  
Robin

**Robin L. Gushman**

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**From:** White, Brian (ATR) <[Brian.White6@usdoj.gov](mailto:Brian.White6@usdoj.gov)>

**Sent:** Tuesday, October 29, 2024 5:59 PM

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**Subject:** RE: US v. LN - Privilege Log (RFP No. 2)

Counsel:

Plaintiffs would like to resolve the deficiencies in Defendants' privilege log relating to Plaintiffs' RFP No. 2, or present any disputes over that log to the Court, in advance of the Discovery Conference scheduled for next Friday, November 8, 2024. To that end, we ask that you provide responses to our questions below no later than close of business tomorrow, Wednesday, October 30, 2024.

Thank you,

Brian

Brian A. White

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**From:** White, Brian (ATR)

**Sent:** Friday, October 25, 2024 9:25 AM

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**Subject:** RE: US v. LN - Privilege Log (RFP No. 2)

Counsel:

Plaintiffs have received Defendants' privilege log identifying documents responsive to Plaintiffs' RFP No. 2 that Defendants are withholding from production. The log lists 18 documents for which Defendants claim the protections of both the attorney-client privilege and the work product doctrine. Each document was disclosed to at least one third party not represented by Defendants' counsel. The log indicates that Defendants are relying on a common legal interest claim to justify withholding these documents notwithstanding the disclosures to third parties.

Plaintiffs previously moved to compel compliance with RFP No. 2. After hearing oral argument, the court granted the motion with respect to three responsive documents, provided guidance on how to address additional documents over which Defendants might seek the protection of the common interest doctrine, and invited the Parties to bring related issues before the Court.

Defendants' privilege log does not satisfy Defendants' burden of demonstrating (1) that each document contains information that is protected by the attorney-client privilege and/or the work product doctrine, (2) that the third parties who received that purportedly privileged information and/or work product share a common legal interest with Defendants, (3) that the information contained in the withheld documents relates to that common legal interest, and (4) disclosure of that information did not substantially increase the risk of a broader disclosure. Accordingly, we ask that you promptly answer the following questions:



- Each entry in the log refers generally to the attorney client privilege and the work product doctrine. Are Defendants claiming that each of these documents are covered by both protections?
- Separately for each third party that was not represented by Defendants' counsel (including Silver Lake) but received privileged information or work product belonging to Defendants, what is the common legal interest? And, for each, is the purported common interest the subject of a written agreement between Defendants and the third party? If so, please produce those written agreements.
- Do Defendants contend that they share a common legal interest with Mr. Azoff in his individual capacity? If so, what is that common legal interest?
- Do Defendants contend that they share a common legal interest with any entity (other than OVG) affiliated with Mr. Azoff? If so, for each such company, what is the common legal interest?
- For each document on the privilege log, how does the subject matter of the communication relate to the common legal interest claimed by Defendants?
- Plaintiffs' RFP No.2 overlaps with documents Plaintiffs sought during the investigation. In a letter dated May 7, 2024, Defendants represented that they were not withholding any documents "on the basis of a joint defense and/or common interest agreement." But, all of the documents listed on Defendants' privilege log for RFP No. 2 pre-date the CID. What is it Defendants' explanation for this apparent discrepancy?

Based on the information presently available to Plaintiffs, it does not appear that Defendants' privilege claims are justified. Plaintiffs intend to include this issue on the agenda for the upcoming October 29, 2024 Discovery Conference. If Defendants can properly substantiate their privilege claims prior to the Discovery Conference, we can remove this item from the agenda.

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**Subject:** [EXTERNAL] US v. LN - Privilege Log (RFP No. 2)

Counsel,

Attached please find Defendants' privilege log reflecting communications responsive to Plaintiffs' RFP No. 2. Defendants designate the privilege log as Confidential pursuant to the Protective Order.

Best,  
Robin

**Robin L. Gushman**

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